

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARIO DAVIS, #231964,

Petitioner,

v.

Case No. 15-14420

TONY TRIERWEILER,

Respondent.

/

ORDER GRANTING PETITIONER'S REQUEST FOR AN EXTENSION OF TIME TO FILE AN APPLICATION TO PROCEED IN FORMA PAUPERIS ON APPEAL AND DENYING HIS REQUEST FOR THE APPOINTMENT OF APPELLATE COUNSEL

Michigan prisoner Mario Durrel Davis ("Petitioner") filed a pro se petition for a writ of habeas corpus challenging his state court convictions under 28 U.S.C. § 2254. The court denied the petition on March 31, 2018, and Petitioner filed a notice of appeal dated April 30, 2018. The matter is now before the court on Petitioner's requests for an extension of time to file an application to proceed in forma pauperis ("IFP") on appeal (Dkt. #17) and for the appointment of appellate counsel (Dkt. #16). For the following reasons, the court will grant the extension of time, but will deny without prejudice Petitioner's request for appointment of counsel.

I. Request for Extension of Time to File IFP

Petitioner first requests an extension of time to file an application to proceed IFP on appeal. Federal Rule of Appellate Procedure 24(a)(1) provides that a party to a district court action who seeks to appeal IFP must file a motion in the district court. On appeal, the Sixth Circuit ordered that Petitioner either pay the appellate filing fee or

make a motion to proceed IFP to this court on or before June 6, 2018. See *Mario Davis v. S. Burt*, 18-1515 (6th Cir. May 7, 2018). Petitioner seeks an extension of time because of his transfer to a different prison and related delay in access to his legal paperwork. Petitioner's request coming only a few days after the imposed deadline, and in light of Petitioner's reasons for the delay, the court finds that there is good cause to grant Petitioner an extension to file his application to proceed IFP. The court will provide Petitioner 30 days from the deadline imposed by the Sixth Circuit—that is, until July 7, 2018. The court notes that the appeal will not move forward until Petitioner pays the appellate filing fee or files an application to proceed IFP on appeal.

II. Request for Appellate Counsel

Petitioner also seeks the appointment of appellate counsel. "The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982); see also *United States v. Garcia-Robles*, 562 F.3d 763, 767–68 (6th Cir. 2009). Because jurisdiction of this case was transferred to the Sixth Circuit upon the filing of the notice of appeal, Petitioner's request for the appointment of appellate counsel is more appropriately addressed to that court. See, e.g., *McBride v. Lafler*, No. 06-15380, 2012 WL 3578736, at *2 (E.D. Mich. Aug. 20, 2012) (citing cases and denying same motion). Accordingly,

IT IS ORDERED that Petitioner's request for the appointment of appellate counsel (Dkt. #16) is DENIED WITHOUT PREJUDICE. The denial is without prejudice to Petitioner's ability to file such a motion with the Sixth Circuit.

IT IS FURTHER ORDERED that Petitioner's request for an extension of time (Dkt. #17) is GRANTED. Petitioner will have until **July 6, 2018** to file in this court a motion to proceed IFP.

s/Robert H. Cleland /
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: June 22, 2018

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, June 22, 2018, by electronic and/or ordinary mail.

s/Lisa Wagner /
Case Manager and Deputy Clerk
(810) 292-6522

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